

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds as follows:

The Appeals Board finds the Award of the Administrative Law Judge should be affirmed. The Appeals Board agrees with the analysis of the Administrative Law Judge as set forth in the Award. The findings of fact and conclusions of law set forth in the Award are accurate and supported by the record, and it is not necessary to repeat those findings and conclusions herein.

Claimant alleges that the Administrative Law Judge erred in adopting the opinion of Philip R. Mills, M.D., the court ordered independent medical examining doctor, over that of Douglas Davidson, M.D., the treating physician. However, it is noted that Dr. Davidson's functional impairment rating was, in part, based upon claimant having a total meniscectomy when in reality the procedure performed was only a partial meniscectomy. Additionally, Dr. Davidson's opinion assessed an additional 17 percent impairment based upon laxity in the claimant's knee. Neither Dr. Mills nor Eugene Kaufman, M.D., who examined claimant at respondent's request, found any laxity in the knee or the lower extremity. Dr. Mills went on to note that claimant exhibited good mediolateral stability, again indicating no laxity.

Court ordered independent medical examiners may be appointed under K.S.A. 44-501e in situations where the medical opinions vary regarding claimant's functional impairment. Here, Dr. Kaufman had assessed claimant a 2 percent impairment, while Dr. Davidson had assessed claimant a 23 percent impairment. The opinion of Dr. Mills, as a court ordered independent medical examining physician, is given some weight due to the independent nature of the opinion. A court ordered independent medical examiner is intended to be unbiased and impartial, and will, therefore, hopefully provide a fair assessment of a claimant's limitations. In that regard, the Appeals Board, as was the Administrative Law Judge, is persuaded by the opinion of Dr. Mills that claimant has a 5 percent functional impairment to his right leg.

The Appeals Board, therefore, adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein in awarding claimant a 5 percent functional impairment to the right leg.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated May 11, 1999, should be, and is hereby, affirmed, and an award is granted in favor of the claimant, Hal Hooper, and against the respondent, McBride Electric, and its insurance carrier, Industrial Indemnity Company,

for an accidental injury occurring on September 10, 1997, and based upon an average weekly wage of \$512.50, for a 5 percent impairment to the right leg.

Claimant is entitled to 7.71 weeks of temporary total disability compensation at the rate of \$341.84 per week totaling \$2,635.58, followed by 9.61 weeks of permanent partial disability compensation at the rate of \$341.84 per week in the amount of \$3,285.08 for a 5 percent permanent partial scheduled injury to the right leg, making a total award of \$5,920.66. As of the time of this award, the entire amount is due and owing and ordered paid in one lump sum minus amounts previously paid.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent and its insurance carrier as follows:

Barber & Associates	
Transcript of Regular Hearing	\$101.50
Deposition of Douglas Davidson, M.D.	\$170.00

Court Reporting Service	
Deposition of Eugene Kaufman, M.D.	\$122.95

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1999.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS  
Douglas C. Hobbs, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director